IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

Crl.Rev.Pet.No. 713 of 1998()

CRA.254/1993 of ADDL.SESSIONS COURT, KOTTAYAM
CC.55/1991 of JUDL. MAGISTRATE OF FIRST CLASS, CHANGANACHERRY

.....

REVN. PETITIONER: APPELLANT/ACCUSED

SURESH, S/O.PATHROSE
KOCHUPARAMBIL HOUSE
CHINGAVANOM KARA
NATTAKAM VILLAGE.

BY ADV. SRI.TOMY SEBASTIAN
SRI.THANKACHAN K.PAUL

RESPONDENTS: COMPLAINANT/STATE

STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.R.P.NO.713/1998

ORDER ON CRL.M.P.NO.3669/1998 IN CRL.R.P.NO.713/1998

DISMISSED

5.3.2007 Sd/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

CRL.R.P.No.713 of 1998

Dated this the 5th day of March, 2007

ORDER

Revision petitioner stands convicted for the offence punishable under Sections 457, 379 and 34 IPC. The prosecution case is that on 3.5.1990, he along with the second accused committed theft of MO1 gold chain worn by PW2 who was sleeping in the house of PW1 at 2 O'clock in the night. The evidence relied on by the courts below is the testimony of PW14, the Sub Inspector of Police who recovered the stolen property from a jewellery. PW1 the lady, from whom the gold chain was stolen and PW2, her son who lodged the F.I. statement have identified the gold chain. The evidence of PW14 Sub Inspector is that the revision petitioner/accused led him to the jewellery and on the basis of the information conveyed by him, the MO1 gold chain was recovered. The relevant portion of confession has not been marked vide Section 27 of the Evidence Act. Hence, only evidence in this regard is the testimony of PW14. The same is relevant under Section 8 of Evidence Act. It is pointed out that

the evidence of PW1 as to the incident is not consistent with respect to the details mentioned in the F.I. statement. Although in the F.I. statement the gold chain snatched from the neck of PW2 weighed 20 gms., MO1 weighed only 16.5 gms. PW1 has not explained the above discrepancy as to the nature of the gold chain recovered. Further it is pointed out that the case in the F.I. Statement, the version of PW1 is that the chain was snatched and taken away whereas PW1 in her deposition has stated that the theft chain was not removed in the above fashion but by widening the hook. PW5, the proprietor of the jewellery from whose shop, the gold chain was recovered did not support the prosecution case. So also the independent witness to recovery i.e, PW9 also turned hostile. Hence, in the instant case, the only evidence is the testimony of PW14 that the accused led him to the jewellery and on the basis of information furnished by him, MO1 was recovered. In the circumstances, I find that only on the basis of the testimony of the investigating officer, it cannot be held that the prosecution has proved the charge beyond reasonable doubt. I find that the accused is entitled to benefit of

doubt. In the circumstances, findings of the court below is set aside. The accused would stand acquitted.

K.R.UDAYABHANU,
JUDGE

csl